

1 BEFORE THE SHORELINES HEARINGS BOARD
2 STATE OF WASHINGTON

3 IN THE MATTER OF A SHORELINE)
4 VARIANCE PERMIT,)

5 E. ROBERT J. FARRELL,)

6 Appellant,)

7 v.)

8 CITY OF SEATTLE, STATE OF)
9 WASHINGTON DEPARTMENT OF ECOLOGY,)
10 and CHRIS & JANET HENNEY,)

11 Respondents.)
12 _____)

SHB No. 88-34

ORDER GRANTING
SUMMARY JUDGMENT
TO RESPONDENTS
AND AFFIRMING PERMIT

13 On July 20, 1988, Mr. and Mrs. Robert E. Farrell filed an appeal,
14 challenging the City of Seattle's June 27, 1988 issuance of a revised
15 shoreline variance permit for Chris and Janet Henney's construction at
16 1620 Lake Washington Boulevard. A hearing was scheduled for April 4,
17 1989.

18 On October 13, 1988, respondents Henneys filed a Motion to
Dismiss with supporting affidavits and exhibits. The City of Seattle
supported the Motion. On November 7, 1988, appellants Henney filed a

1 Brief in Opposition and exhibits. On November 14, 1988, respondents
2 Henneys filed a Reply with supporting affidavit. Oral argument on the
3 Motion was held on November 28, 1988. Attorney G. Richard Hill of
4 Foster Pepper & Shefelman represented movants Henneys. Attorney Rand
5 L. Koler of Miller, Nash, Wiener, Hager & Carlsen represented Mr.
6 Farrell.

7 A brief procedural history is in order. On January 21, 1988, in
8 a precursor case, SHB No. 87-39, the parties filed a Stipulated
9 Pre-Hearing Order which contained settlement terms. The Board issued
10 the Order that same day, (hereafter "Settlement Order"). The
11 Settlement Order specifies actions to be undertaken. On March 7, 1988
12 Mr. Farrell withdrew his appeal of SHB No. 87-39 and the Board issued
13 an Order of Dismissal.

14 The only issue now currently before this Board in SHB No. 88-34
15 is: does the June 27, 1988 revision to the shoreline variance permit
16 conform to the Settlement Order?

17 Having reviewed the above recited October - November 1988 filings
18 in SHB 88-34 and the SHB 87-39 Settlement Order, and having heard
19 counsels' arguments, the Board enters the following Order:

20 I

21 The Motion to Dismiss is based on affidavits and not solely on
22 the pleadings. We therefore treat the motion as one for Summary
23 Judgment. Civil Rule 12(c). Parties were given reasonable
24 opportunity to present all pertinent material.

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26 ORDER GRANTING SUMMARY
27 JUDGMENT TO RESPONDENTS

SHB No. 88-34

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II

This Board has jurisdiction over the parties and the issuance of a revision to a shoreline variance permit, to determine conformity with the Settlement Order. Cedar Cove Association v. Snohomish County, SHB No. 88-22 (1988); Save v. Bothell, SHB No. 85-39 (1986). The only issue raised in the instant appeal is this conformity issue. No substantive shoreline management issue has been raised.

III

We find that there are no genuine issues as to any material fact relevant to the contested issue. The following facts are not controverted by competent evidence:

- a. The structure setback line was modified to conform to Exhibit B attached to the Settlement Order.
- b. The Henney structure's terrace railings are within the deck setback area prescribed by the Settlement Order and is open;
- c. The area shoreward of the principal structure setback line as defined in Exhibit B does not contain noise or odor-generating equipment;
- d. Final design and structural plans do conform to Exhibit B, were subjected to applicable City review and were approved.
- e. The "footprint" of the current project at issue is no greater than the one agreed to in the Settlement Order.

IV

We observe that the hot tub was clearly a part of the original

1 permit issued in SHB No. 87-39, prior to the Settlement Order.
2 However, its location is not an issue covered by the Settlement Order,
3 and therefore is not an issue before us in this proceeding.
4

5 V

6 We conclude that the revision to the shoreline variance permit
7 conforms to the Settlement Order. Therefore, the Henneys are entitled
8 to judgment as a matter of law.
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ORDER

The Motion for Summary Judgment is GRANTED. Respondents are entitled to judgment as a matter of law. Accordingly, the re-issued shorelines variance permit is hereby AFFIRMED.

DONE this 22nd day of December, 1988.

SHORELINES HEARINGS BOARD


JUDITH A. BENDOR, Presiding


WICK DUFFORD, Chairman


STEVEN W. MORRISON, Member


WILLIAM T. GEYER, Member